

Message Text

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FM SECSTATE WASHDC

TO ALL OECD CAPITALS PRIORITY

USMISSION OECD PARIS PRIORITY

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SUBJECT: DIRECT INVESTMENT ISSUES IN THE OECD

REF: (A) OECD 5239

(B) OECD 9159 (BEING REPEATED)

(C) STATE 88291

1. FOLLOWING ARE SUBSTANTIVE INSTRUCTIONS PERTAINING TO
FLANIGAN TRIP, AS OUTLINED REF. C.

2. IN RECENT WEEKS THERE HAS BEEN HIGH LEVEL REVIEW IN
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WASHINGTON OF UNITED STATES POLICY OBJECTIVES IN INTER-
NATIONAL DIRECT INVESTMENT REFORM AND OF OUR EFFORTS TO
ATTAIN THESE OBJECTIVES IN THE OECD. THE EXECUTIVE
COMMITTEE OF THE COUNCIL ON INTERNATIONAL ECONOMIC

POLICY DECIDED THAT RESTATEMENT OF UNITED STATES PURPOSES AND GOALS FOR INTERNATIONAL INVESTMENT REFORM, BUILDING ON PREVIOUS UNITED STATES POLICY STATEMENTS, MIGHT BE DEEMED APPROPRIATE; MOREOVER, THE UNITED STATES DELEGATION TO THE OECD MINISTERIAL MEETING ON MAY 29-30 MIGHT WISH TO USE THE OCCASION TO GIVE NEW IMPETUS AND A RENEWED SENSE OF SCOPE AND IMPORTANCE TO THE OECD'S WORK ON GUIDELINES AND CONSULTATION MECHANISMS CONCERNING DIRECT INVESTMENT ISSUES. THE INTENT WOULD BE TO BUILD ON WHAT HAS BEEN ACCOMPLISHED SO FAR, PUTTING THAT WORK IN A SOMEWHAT BROADER CONTEXT, AND URGE THAT NEW IMPETUS BE GIVEN TO THE WORK UNDER THE EXECUTIVE COMMITTEE IN SPECIAL SESSION (XCSS) GUIDANCE.

3. IT WAS ALSO AGREED THAT INFORMAL CONSULTATIONS SHOULD BE HELD WITH THE OECD GOVERNMENTS AND CERTAIN OECD AND EC OFFICIALS IN EARLY MAY IN ORDER TO:

A) SEEK SUPPORT FOR A RENEWED IMPETUS TO THE OECD EFFORT ON INVESTMENT REFORM;

B) REITERATE UNITED STATES OBJECTIVES, GET COUNTRY REACTIONS TO THEM, AND ASCERTAIN HOW MUCH SUPPORT OR RESISTANCE WE CAN EXPECT FROM OTHER OECD GOVERNMENTS TO ASSIST US IN OUR DECISION MAKING PROCESS; AND

C) REASSURE GOVERNMENTS THAT THE ADMINISTRATION OPPOSES THE SERIES OF RESTRICTIVE INVESTMENT BILLS BEFORE CONGRESS AND IS DETERMINED TO MAINTAIN AN OPEN INVESTMENT SYSTEM IN THE UNITED STATES, AND MAKE THE POINT THAT CLEAR EVIDENCE OF FURTHER PROGRESS ON INVESTMENT REFORM IN THE OECD COULD BE AN IMPORTANT FACTOR IN OUR RESISTANCE TO POSSIBLE RESTRICTIVE CONGRESSIONAL ACTION.

4. AT THE SAME TIME, WE WANT TO AVOID COUNTERPRODUCTIVE INITIATIVES OR OTHER ACTIONS WHICH, BY CREATING RESENTMENT OR APPREHENSION, COULD DERAIL THE PRESENT WORK
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PROGRAM OR WHICH COULD LEAD TO A WEAKENING OF EXISTING AGREEMENTS, SUCH AS THE CAPITAL MOVEMENTS CODE.

5. RESULTS OF CONSULTATIONS WILL BE REVIEWED IN WASHINGTON DURING WEEK OF MAY 13. WE WOULD HOPE BY THEN TO HAVE BETTER IDEA OF TACTICS TO BE USED AT THE MINISTERIAL MEETING AND ON SUBSEQUENT OCCASIONS IN THE OECD IN ORDER TO GIVE THE MAXIMUM IMPETUS TO ACHIEVEMENT OF OUR INVESTMENT REFORM OBJECTIVES. POSTS WILL BE ADVISED OF RESULTS OF REVIEW, AND ANY FOLLOW-UP ACTIONS.

6. MR. FLANIGAN AND PARTY WILL VISIT PARIS (INCLUDING OECD), BRUSSELS (INCLUDING EC), BONN AND LONDON. (REF. C) THESE POSTS MAY WISH TO DRAW GENERALLY ON FOLLOWING IN APPRISING HOST GOVERNMENTS OF PURPOSE AND SCOPE OF FLANIGAN TRIP. OTHER POSTS ARE REQUESTED TO CONSULT WITH THEIR HOST GOVERNMENTS BEGINNING MAY 6 AND TO REPORT RESULTS OF THESE CONSULTATIONS IF POSSIBLE BY COB FRIDAY, MAY 10. CONSULTATIONS SHOULD BE AT A HIGH LEVEL WITH APPROPRIATE ECONOMIC AND FINANCIAL OFFICIALS. IT

SHOULD BE EMPHASIZED THAT THE CONSULTATIONS ARE INTENDED TO BE JUST THAT, TO PROVIDE FOR AN EXCHANGE OF VIEWS, AND POSTS SHOULD AVOID GIVING IMPRESSION THAT THESE CONSULTATIONS IN THEMSELVES REPRESENT A NEW INITIATIVE BY THE UNITED STATES.

7. FOR REF. C. ACTION POSTS. MR. FLANIGAN IS INTERESTED IN HAVING BY COB FRIDAY, MAY 3, YOUR JUDGMENTS AS TO HOW HOST GOVERNMENTS LIKELY TO REACT TO HIS PRESENTATION, AS OUTLINED BELOW, AND HOW HE MIGHT BEST ADJUST HIS PRESENTATION TO ANTICIPATE POSSIBLE DIFFICULTIES. HE IS AWARE, FOR EXAMPLE, FROM OECD 10468 THAT FRENCH ARE TAKING VERY DIFFERENT VIEW FROM GERMANS AND BRITISH ON QUESTION OF NATIONAL TREATMENT EXERCISE. HE ALSO WOULD LIKE JUDGMENTS ON WHAT POINTS HOST GOVERNMENTS MIGHT RAISE WITH HIM AND HOW HE MIGHT MOST EFFECTIVELY RESPOND TO THESE. HE HAS BEEN GIVEN COPIES OF YOUR RESPONSES TO STATE 53993, REGARDING FOREIGN INVESTMENT CLIMATES. PLEASE FEEL FREE TO ADD TO YOUR LIMITED OFFICIAL USE
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SUBMISSIONS ANY FURTHER INFORMATION YOU CONSIDER MIGHT BE USEFUL, SUCH AS DEROGATIONS WITH RESPECT TO NATIONAL TREATMENT, AND INCENTIVES BY HOST GOVERNMENT.

8. FOR ROME. IN MAKING YOUR APPROACH, PLEASE ASK THAT MR. FLANIGAN'S REGRETS BE CONVEYED TO MINISTER ANTONIO GIOLITTI, PROSPECTIVE CHAIRMAN OF UPCOMING OECD MINISTERIAL MEETING IN MAY, THAT HIS COMMITMENTS HERE HAVE RESULTED IN TIGHT SCHEDULE PREVENTING HIS INCLUDING ROME IN HIS ITINERARY. HE HOPES TO SEE DR. GIOLITTI AT SOME OTHER MUTUALLY CONVENIENT TIME TO EXCHANGE VIEWS ON THESE IMPORTANT ISSUES.

9. FOR TOKYO. AT YOUR DISCRETION, YOU MAY WISH TO ADVISE GOJ THAT WE HAVE ALSO CONSIDERED A VISIT TO TOKYO TO HOLD DISCUSSIONS WITH JAPANESE. FLANIGAN SCHEDULE APPEARS TO PRECLUDE THAT POSSIBILITY FOR HIM, THOUGH VISIT IS STILL BEING CONSIDERED. IN ANY CASE, FLANIGAN WILL TRY TO SEE JAPANESE AMBASSADOR TO OECD IN PARIS FOR PRIVATE DISCUSSION TO SUPPLEMENT EMBASSY

APPROACH IF VISIT TO TOKYO PROVES IMPOSSIBLE AS OF EARLY NEXT WEEK.

10. THE FOLLOWING ARE TALKING POINTS AND QUESTIONS TO WHICH WE SEEK ANSWERS. SOME OF THESE TALKING POINTS MAY NOT BE APPROPRIATE FOR USE AT ALL OECD CAPITALS, EMBASSY OFFICERS MAY THEREFORE WISH TO TAILOR THEIR APPROACHES TO LOCAL CIRCUMSTANCES.

A. THE UNITED STATES BELIEVES THAT THE OECD MINISTERIAL

MEETING MIGHT PROVIDE AN OCCASION FOR GIVING WORK ON DIRECT INVESTMENT REFORM RENEWED IMPETUS AS AN IMPORTANT ELEMENT OF OVERALL INTERNATIONAL ECONOMIC REFORM. THUS, WE ARE EXCHANGING INFORMAL VIEWS AND DISCUSSING VARIOUS IDEAS IN ADVANCE OF THE OECD MINISTERIAL AS AN AID TO US

IN CLARIFYING OUR OWN THINKING ON THEM. WE HOPE THAT OTHER GOVERNMENTS WILL LEND THEIR EXPLICIT SUPPORT DURING THE MINISTERIAL AND SUBSEQUENTLY.

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B. WE APPRECIATE AND SUPPORT THE WORK IN THE OECD OF THE AD HOC GROUP OF INVESTMENT EXPERTS AND SECRETARIAT OVER THE PAST HALF YEAR ON DEVELOPING A PRINCIPLE OF NATIONAL TREATMENT OF FOREIGN INVESTORS, TOGETHER WITH APPROPRIATE CONSULTATION PROCEDURES, AND A CONCEPTUAL FRAMEWORK AND A MECHANISM FOR CONSULTATIONS ON THE INTERNATIONAL EFFECTS OF GOVERNMENT POLICIES TOWARD DIRECT INVESTMENT. GIVEN THE MANDATE OF THE XCSS FOR THIS EXERCISE AND THE SOMETIMES DIFFICULT NATURE OF THE ISSUES BEING CONSIDERED, WE BELIEVE THIS WORK HAS PROGRESSED WELL, AND WE APPRECIATE THE SUPPORT OF THE OTHER MEMBER GOVERNMENTS. WE CONTINUE TO OPPOSE DISCRIMINATORY (OR DIFFERENT) TREATMENT OF NEW INVESTORS AS BETWEEN (A) NATIONALS AND FOREIGNERS (OTHER THAN IN TRADITIONALLY EXEMPTED AREAS),

(B) FOREIGNERS OF DIFFERENT NATIONALITIES, OR AS TO THE FORM THE INVESTMENT TAKES (NEW INVESTMENT OR TAKEOVER). WE ARE CONCERNED THAT THE DECISION OF THE AD HOC EXPERTS TO CONFINE THEIR DISCUSSION OF THE APPLICATION OF THE NATIONAL TREATMENT PRINCIPLE TO ESTABLISHED INVESTORS WILL LEAVE A GAP IN THE COVERAGE OF INVESTMENT MATTERS BY OECD AGREEMENTS. THIS GAP WOULD CONSIST OF THOSE ASPECTS OF THE RIGHT OF ESTABLISHMENT WHICH ARE NOT ALREADY COVERED BY THE CAPITAL MOVEMENTS CODE (CMC) OR PROVISIONS OF FCN TREATIES. WE RECOGNIZE THAT ALL GOVERNMENTS MAKE SOME EXCEPTIONS TO THE NATIONAL TREAT-

MENT PRINCIPLE, SOME MORE THAN OTHERS IN TERMS OF NATIONAL

OBJECTIVES. IS YOUR GOVERNMENT SATISFIED WITH THE APPROACH TAKEN AND THE WORK DONE THUS FAR BY THE OECD IN THIS AREA?

C. THE XCSS INVESTMENT EXPERTS AND THE OECD SECRETARIAT HAVE BEGUN TO REVIEW PROPOSALS FOR CONSULTATIONS AND REVIEWS IN THE DIRECT INVESTMENT AREA. WE WOULD BE INTERESTED IN THE VIEWS OF OTHER OECD GOVERNMENTS ON

PROCEDURAL ASPECTS OF THE INTERNATIONAL INVESTMENT REFORM EFFORT. OUR TENTATIVE THINKING IS THAT IT IS NOT TOO EARLY TO CONSIDER THE FUTURE CONSULTATION PROCEDURES THAT MIGHT BE DEVELOPED IN THE OECD FOR HIGH-LEVEL OFFICIALS LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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FROM CAPITALS, WHO MIGHT MEET PERIODICALLY IN PARIS (1) TO REVIEW THE WORK OF VARIOUS OECD COMMITTEES OR WORKING GROUPS ON PARTICULAR INVESTMENT ISSUES; (2) TO GIVE GUIDANCE TO THOSE GROUPS; AND (3) TO HOLD DISCUSSIONS ON IMPORTANT INVESTMENT ISSUES OR DISPUTES. SUCH A FRAMEWORK FOR HIGH-LEVEL DISCUSSION OF INVESTMENT MATTERS SHOULD PROBABLY DEAL ALSO WITH SOME OF THE ISSUES THAT MAY ARISE OUT OF THE WORK PROGRAM OF THE SPECIALIZED COMMITTEES ON MULTINATIONAL ENTERPRISES. COULD THE HOST GOVERNMENT INDICATE ITS PRESENT THINKING ON WAYS TO CARRY ON WORK ON INVESTMENT REFORM ON THE OECD?

E. IS YOUR HOST GOVERNMENT SATISFIED WITH THE SCOPE AND PACE OF THE OECD WORK PROGRAM ON MNC'S?

F. WE ATTACH FIRST PRIORITY TO OBTAINING AGREEMENT ON SPECIFIC INTERNATIONAL INVESTMENT ISSUES AMONG THE

DEVELOPED COUNTRIES AND BELIEVE THAT THE OECD HAS CORRECTLY LIMITED ITS WORK TO INVESTMENT PROBLEMS IN THE OECD AREA. A CONSENSUS ON MANY ISSUES IS LIKELY TO BE MORE DIFFICULT TO REACH IF THE RATHER DIFFERENT PROBLEMS OF FOREIGN INVESTMENT IN LDCS WERE ALSO INCLUDED. HOWEVER, MANY OECD COUNTRIES ARE MAJOR INVESTORS IN DEVELOPING WORLD. ACCORDINGLY, IN TERMS OF DEVELOPING LONGER RANGE PLANNING WE WOULD LIKE TO KNOW YOUR HOST GOVERNMENTS VIEWS ON WHAT ROLE OECD MIGHT USEFULLY PLAY IN BROADER GLOBAL CONTEXT. DOES HOST GOVERNMENT SEE OECD ROLE, FOR EXAMPLE, IN DEVELOPING SET OF PRINCIPLES REGARDING:

(L) SECURITY OF FOREIGN INVESTMENT IN DEVELOPING COUNTRIES, INCLUDING EXPROPRIATION AND ENFORCED PARTICIPATION AND APPLICATION OF STANDARDS OF INTERNATIONAL LAW IN ITS TREATMENT;

(2) HOW TO INSURE THAT INTERNATIONAL INVESTMENT MAKES THE

FULLEST POSSIBLE CONTRIBUTION TO ECONOMIC DEVELOPMENT;

(3) HOW TO PROMOTE ACCEPTANCE BY LDCS OF THE LIBERAL
FOREIGN INVESTMENT POLICIES WHICH WE ARE SEEKING TO
ACHIEVE AMONG THE OECD COUNTRIES;
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(4) MEANS OF PREVENTING INVESTMENT DISPUTES FROM ESCALAT-
ING INTO MAJOR GOVERNMENT-TO-GOVERNMENT ISSUES AND OF

FACILITATING IMPARTIAL SOLUTIONS TO SUCH DISPUTES (INCLUD-
ING RESORT TO INTERNATIONAL ARBITRATION, CONCILIATION AND/
OR FACT-FINDING); AND

(5) THE RELATIONSHIP BETWEEN WORK ON INVESTMENT MATTERS
IN THE OECD AND THAT GOING ON IN OTHER INTERNATIONAL
FORUMS, PARTICULARLY IN THE VARIOUS UN BODIES?

G. THERE HAVE BEEN SEVERAL RESTRICTIVE INVESTMENT BILLS
SUBMITTED TO CONGRESS WHICH ARE NOT CONSISTENT WITH THE
OBJECTIVES OF THE ADMINISTRATION. WE ARE DETERMINED
TO MAINTAIN AN OPEN INVESTMENT SYSTEM IN THE UNITED STATES
BASED ON THE PRINCIPLES OF NATIONAL TREATMENT AND FREE
ENTRY OF INVESTMENT CAPITAL, AND THEREFORE, THIS ADMINI-
STRATION HAS OPPOSED AND WILL CONTINUE TO OPPOSE RESTRIC-
TIVE INVESTMENT LEGISLATION. CLEAR EVIDENCE OF FURTHER
PROGRESS ON INVESTMENT REFORM IN THE OECD WILL STRENGTHEN
OUR POSITION OF RESISTING RESTRICTIVE CONGRESSIONAL ACTION.
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